



Mutual Fund Dealers Association of Canada
Association canadienne des courtiers de fonds mutuels

**IN THE MATTER OF A DISCIPLINARY HEARING
PURSUANT TO SECTIONS 20 AND 24 OF BY-LAW NO. 1 OF
THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA**

Re: Kevin Desbois

Heard: March 9, 2010 in Toronto, Ontario
Reasons for Decision: March 16, 2010

REASONS FOR DECISION

Hearing Panel of the Central Regional Council:

The Hon. John B. Webber, Q.C.
Guenther Kleberg
Anne Traczuk

Chair
Industry Representative
Industry Representative

Appearances:

David Halasz)	For the Mutual Fund Dealers Association of
)	Canada
Kevin Desbois)	Did not appear and was not represented by
)	Counsel

1. As set out in the Notice of Hearing, the Respondent, Kevin Desbois, was charged as follows:

Allegation #1: Commencing on or about March 21, 2007, the Respondent has failed to respond to a request from MFDA Staff to provide a written statement concerning his termination by the Member, contrary to section 22.1 of MFDA By-law No.1.

2. Although Mr. Desbois was given adequate notice of this hearing, he neither attended nor took part in the prior telephone conference calls arranged to set up the date for hearing. The Mutual Fund Dealers Association of Canada *Rules of Procedure*, section 7.3, provides that failure to attend the hearing on the date and time and location specified in the Notice of Hearing allows the Panel to proceed with the hearing without further notice to and in the absence of the Respondent. In addition, it allows the Hearing Panel to accept the facts alleged and the conclusions drawn by the Corporation of the Notice of Hearing as proven and impose any of the penalties and costs described in section 24.1 and 24.2, respectively, of MFDA By-law No. 1.

3. We are satisfied that the Respondent received appropriate notice of the entire procedure and of the allegation against him by virtue of the affidavits of Ann Cross, sworn March 13, 2008, July 8, 2008 and February 1, 2010, which said affidavits were filed as exhibits before the Panel.

4. We were directed to the affidavit of Stephen Glanville, sworn January 19, 2010, which confirms that the Respondent was terminated by the Member for cause on January 25, 2007. The Member made enquiries as to what had taken place and determined that the Respondent admitted that he had misappropriated approximately \$15,000 from clients' mutual fund accounts and used those funds for his own purposes. However, the Member later determined that the Respondent had, in fact, misappropriated \$186,995.19 from 10 clients. The Member has reimbursed the clients for their losses, together with interest. The Respondent is not currently registered in the securities industry in any capacity.

5. Commencing in February 2007, MFDA attempted to contact the Respondent to have him respond to the request for a statement. These efforts continued until March

2008. As of that date the Respondent had not responded to MFDA Staff's request for a statement regarding his termination by the Member. His failure to respond has continued up until the date of the hearing.

6. Enforcement Counsel has demonstrated to the satisfaction of the Panel that the allegation alleged did occur, as noted above from the affidavit filed. The Panel advised Enforcement Counsel that the violation had been proven and requested his submissions on penalty, including costs. Enforcement Counsel requested a penalty against the Respondent as follows:

- a) a permanent prohibition from conducting securities-related business in any capacity while in the employ of, or associated with, any MFDA Member; and
- b) a fine in the amount of \$50,000.

Enforcement Counsel also seeks costs in the amount of \$7,500.

7. The failure of the Respondent to cooperate by providing a written statement to MFDA Staff is a very serious matter, as is noted from the four cases contained in the book of authorities provided by Enforcement Counsel. This failure to comply prevents the MFDA from performing its regulatory function by fully investigating a matter and determining all of the relevant facts, and the full extent and implications of the underlying events.

8. In considering the penalty requested, we have considered the protection of the investing public, the integrity of the securities markets, specific and general deterrence, the protection of the MFDA membership and protection of the integrity of the MFDA's enforcement process.

9. We recognize, as noted above, that this is a serious allegation. We are unaware as to whether the Respondent recognizes the seriousness of the improper activity. We are also concerned about any damage that may be caused to the integrity of the capital markets. The penalty that is imposed must deter not only the Respondent but other

persons who would act in a similar manner. Our review of the guidelines leads us to conclude that the penalty proposed by Enforcement Counsel is clearly appropriate and within the standards established in earlier cases.

10. For these reasons the Panel imposes upon the Respondent a permanent prohibition from conducting securities-related business in any capacity while in the employ of, or associated with, any MFDA Member. The Respondent will also be ordered to pay a fine in the amount of \$50,000 and costs in the amount of \$7,500.

DATED this 16th day of March, 2010.

“John B. Webber”
The Hon. John B. Webber, Q.C.,
Chair

“Guenther Kleberg”
Guenther Kleberg
Industry Representative

“Anne Traczuk”
Anne Traczuk
Industry Representative